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HIS LATE MAJESTY KING EDWARD VII.

The sudden demise of His Late Majesty King Edward VII has filled all classes of his subjects in the British Empire with profound sorrow and has been treated even by great masses of men in other foreign countries as a personal bereavement. It will be difficult to fill his place in the international world where he played so well his part of Peace-Maker. To us in India he was not a mere sovereign residing thousands of miles away. His late Majesty, when Prince of Wales, visited India, and there are many still here who have vivid and pleasing recollections of his visit. The message delivered by His Majesty to the Princes and peoples of India at the time of the Jubilee of the direct assumption of the Sovereignty of British India, followed as it was by the recent statute giving to the people of India a tolerably substantial instalment of political power would rightly be cherished as a Declaration of Rights just as the Queen's Proclamation of 1858 is regarded as the Charter of India. It is a matter for regret that His Majesty did not live long enough to see the actual working of the reforms initiated in his name.

To the legal world his loss was direct. It would interest our readers to know that His Majesty was called to the Bar and became Bencher of the Middle Temple, in 1861, occupied the office of the Treasurer of that Inn in 1887, and shewed great interest in the advancement of the legal profession and its activities. His reign was very short, being only 9 years and 4 months. His death at a time when the political atmosphere of the British Isles was more or less in a state of confusion is inopportune, but his successor, King George V, who has sympathy as his watch-word will, we have no doubt, be able to steer clear of difficulties.

JUSTICES OF THE PEACE IN THE STATE OF MYSORE, HOW THEY ARE APPOINTED, THE POWERS THEY EXERCISE, AND THE PECULIAR POSITION OF A EUROPEAN BRITISH SUBJECT IN MYSORE.

BY

B. W. S. LAWRANCE, B.A., (*Cantab*).
Barrister-at-Law, Inner Temple.

The State of Mysore is an independent Native State ruled over by His Highness the Maharajah of Mysore, and consists of two parts, Mysore Proper, and the Civil and Military Station of Bangalore.

At one time, it was doubtful, as to whether the Civil and Military Station of Bangalore was a portion of the State of Mysore or a part of British India. The doubt, however, was set at rest by a ruling of the High Court of Madras, in *In re Hayes*. Their Lordships *Muthusami Aiyar* and *Parker*, JJ., in that case, pointed out that in 1881, when the State of Mysore was transferred by the Governor-General in Council to His Highness the Maharajah of Mysore, the whole province of Mysore was transferred and the Civil and Military Station of Bangalore was not specially excluded. The instrument of transfer, however, provided for the establishment of British Cantonments in the State of Mysore, for the Maharaja granting, free of all charge, such lands as may be required for such cantonments, and for renouncing all jurisdiction within the lands so granted. (*Mysore Blue Book*, page 193).

On the 19th May 1881, the Maharajah of Mysore assigned the Civil and Military Station of Bangalore to the British Government and renounced the exercise of all jurisdiction within the said station with effect from the 25th March 1881. (see Notification, *Mysore Gazette*, Part I, No. 8, page 25, of the 21st May 1881).

It will be seen from the above, that in the State of Mysore, there are two administrations going on side by side. The greater portion of the Mysore State, Mysore Proper, or the Model State of Mysore as it is called, is under the administration of

1 (1888) I. L. R. 12 M. 39.

H. H. the Maharaja, where as theassigned tract, the Civil and Military Station of Bangalore, is under the administration of the British Government, H. H. the Maharaja having renounced all jurisdiction on the 21st May 1881.

Consequently, Acts passed by the Governor-General in Council, to have effect in British India, have no force in the Civil and Military Station of Bangalore, as it is a part of the Mysore State, until the same have been extended to the Civil and Military Station of Bangalore, by the Governor-General in Council in virtue of powers conferred by the Indian Councils Act of 1861, and the several Foreign Jurisdiction and Extradition Acts, and Orders in Council.

Thus in virtue of the Foreign Jurisdiction and Extradition Act (Act XXI of 1879) the Governor-General in Council on the 3rd March 1883 introduced Act x of 1882 (the old Criminal Procedure Code) into the Civil and Military Station of Bangalore, with the exception of so much of it as applies :—(i) to the Courts of Presidency Magistrates, (ii) to Justices of the Peace, (iii) to European British subjects and (iv) to the High Courts of Judicature established under 24 and 25 Vict., Ch. 104 (*Gazette of India*, Part I, page 137, of 3rd March 1883).

In a similar way, the Governor-General in Council, by a Notification, dated 7th October 1898, Simla, No. 2688 I. A., Government of India, Foreign Department, extended the present Criminal Procedure Code (Act V of 1898), to have effect in the Civil and Military Station of Bangalore, from the 1st November 1898, with the exception of (i) Sections 22 to 25, (ii) the first forty five words of Section 30, and (iii) all the provisions relating to European British subjects.

The Code of Criminal Procedure, Act X of 1882, which is in force in that part of the Mysore State which is under the administration of H. H. the Maharaja, differs from the Criminal Procedure Code in force in British India, in that Sections 443 to 459 are expressly excluded and in Section 1 of Regulation I of 1882, by which Regulation, the Code was introduced into Mysore Proper, it is provided especially that "nothing herein contained shall be deemed to confer any jurisdiction in proceedings against European British subjects."

The exclusion of the sections relating to European British subjects from the Criminal Procedure Codes in force in Mysore Proper, and the Civil and Military Station, has led to the position of European British subjects in the State of Mysore (by the State of Mysore, I mean, Mysore Proper and the Civil and Military Station of Bangalore) being different from that occupied by European British subjects in British India, in several important respects. These points of difference will be dealt with later on in this article. The first Justices of the Peace for the State of Mysore were appointed on the 21st July 1881. (*Gazette of India* Part I, page 296, of the 23rd July 1881—Government of India Notification, Judicial, No. 159 of T. J. dated 21 July 1881).

They were ten in number and were appointed by the Governor-General in Council under the authority conferred on him under Section 6 of the Foreign Jurisdiction and Extradition Act (Act XXI of 1879).

The powers of the Government of British India to make laws and exercise jurisdiction over British subjects outside British India but within the territories of Princes or States in India in alliance with the British Government are declared in, and regulated by, English Statute Law.

By the Indian Councils Act, 1861, power was given to the Governor-General in Council at Meetings for making laws and regulations for all European British subjects within the dominions of Princes and States in alliance with His Majesty.

In virtue of such powers the Governor-General in Council has from time to time passed the several Foreign Jurisdiction and Extradition Acts of 1872 (Act XI of 1872), of 1879 (Act XXI of 1879) and of 1903, and under these Acts which regulate rather than create the Governor-General in Council's jurisdiction in territories in India outside British India, the Governor-General in Council has from time to time passed the following Series of Notifications :—

No. 178-J. dated the 23rd September 1874.—With reference to Notification No. 1203 of this date, in the Home Department, the Governor-General in Council is pleased, in the

exercise of the powers conferred by the 28th Vict, Chap. 15, Section 3, to make the following orders :—

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native States, Territories, and Chiefships below named, shall, until the Governor-General in Council otherwise orders, be exercised by the High Courts of Judicature established at Fort William, Madras, Bombay, and in the North-Western Provinces, respectively, as follows :—

I. * * * *

II. By the High Court at Madras in—Mysore, Travancore, Cochin, Puddukottai, Banganapalle, Sandur. (See *Gazette of India* 1874, Part I p. 485).

III. & IV. * * * *

No. 179-J dated the 23rd September 1874.—In exercise of the powers vested in him by Section 6 of Act XI of 1872 the Governor-General in Council is pleased to direct that all Justices of the Peace within the States, Territories and Chiefships specified in the preceding notification, shall commit for trial to the High Courts respectively having jurisdiction under the said notification such European British subjects, being Christians, as are required by Act X of 1872 to be committed to a High Court. That Act requires that such persons only should be committed to a High Court as are accused of offences punishable with death or transportation for life.

In the case of *Ward* v. *The Queen*,[1] a European British subject committed by a Justice of the Peace of Mysore on a charge under Section 348 of the Indian Penal Code was convicted on the 10th March 1880.

It was held by the High Court of Madras that the commitment and conviction were illegal. Their Lordships also expressed the opinion, that, as in Notification 179-J, the Governor-General in Council has not directed, to what Court the Justice of the Peace is to commit in cases, in which a European British subject, being a Christian, who is accused of an offence not punishable with death or transportation for life, and inasmuch as the High Court at Madras has been duly constituted a Court of original criminal jurisdiction to take cognizance of offences committed by European British subjects, being Christians, it may be that in the absence of any special

1. (1908) I.L.R. 5 M. 33.

direction, a commitment to the High Court at Madras would be a good commitment.

No. 159-I dated 21st July 1881.—In exercise of the powers conferred by Section 6 of Act XXI of 1879 (the Foreign Jurisdiction and Extradition Act, 1879) the Governor-General in Council is pleased to appoint the following gentlemen to be Justices of the Peace *within the State of Mysore* :—

(1) The Resident in Mysore for the time being, being a European British subject.

(2) The Chief Judge of Mysore for the time being, being a European British subject.

No. 12-I dated the 3rd January 1884.—In exercise of the powers conferred by Section 6 of Act XXI of 1879 (the Foreign Jurisdiction and Extradition Act, 1879) the Governor-General in Council is pleased to appoint the Assistant to the Resident at Mysore, for the time being, being a European British subject, to be a Justice of the Peace *within the State of Mysore.*

(See *Gazette of India*, 1881, Part I, p. 296, and 1884, Part I, p. 2, respectively).

No. 955-I, dated the 18th March 1884.—In exercise of the powers conferred by Section 6 of Act XXI of 1879 (Foreign Jurisdiction and Extradition Act, 1879) the Governor-General in Council is pleased to appoint the officer for the time being holding the office of District Magistrate of the Civil and Military Station of Bangalore, being a European British subject, to be a Justice of the Peace *within the State of Mysore.* (See *Gazette of India*, 1884, Part I, 124).

No. 3822-I dated the 24thOctober, 1884.—In exercise of the powers conferred by Section 6 of Act XXI of 1879 (the Foreign Jurisdiction and Extradition Act, 1879) the Governor-General in Council is pleased to appoint the officer for the time being holding the office of Civil and Sessions Judge of the Civil and Military Station of Bangalore, being a European British subject, to be a Justice of the Peace *within the State of Mysore.* (See *Gazette of India*, 1884, Part I, p. 360).

No. 2616-I dated the 6th August 1890.—In the exercise of the powers conferred by Section 6 of Act XXI of 1879, the Governor-General in Council is pleased to direct that a Justice of the Peace in any Native State, Territory or Chiefship specified

in Foreign Department Notification No. 178-J, dated the 23rd September 1874, shall commit for trial to the High Court which under that Notification, has original and appellate criminal jurisdiction in pursuance of the Statute 28 and 29 Vict, Ch. 15, Section 3, over European British subjects (being Christians) resident in such State, Territory or Chiefship.

2. Foreign Department Notification No. 179-J, dated the 23rd September, 1874, is hereby cancelled. (See *Gazette of India*, 1890, Part I, p. 612).

Up to date, the Justices of the Peace in the State of Mysore, whether they have been appointed by the Governor-General in Council personally or in virtue of their office, have always been appointed to be Justices of the Peace, within the State of Mysore. Up to the present time, no enactment has been passed, either by the Governor-General in Council or His Majesty the King in Council, distributing jurisdiction amongst the Justices of the Peace in the State of Mysore. Consequently, from the terms of the Notifications appointing them, Justices of the Peace in the State of Mysore have concurrent jurisdiction, throughout the State of Mysore.

This state of the law, it is conceivable, may lead to great hardships. For example, a complaint may be filed before the District Magistrate of the Civil and Military Station of Bangalore, who is an *ex-officio* J. P., within the State of Mysore, relating to an alleged offence committed in the city of Mysore, which is some considerable distance from Bangalore, against a European British subject resident in Mysore. Further, all the witnesses in the said case might be residents of the city of Mysore. In such a case, the balance of convenience would clearly lie with a Justice of the Peace resident in Mysore. Yet the District Magistrate of the Civil and Military Station of Bangalore, who is *ex-officio* a J. P. within the State of Mysore, would be bound to accept the complaint.

Of course, it would be open to the accused to move the High Court of Madras to transfer the case under Section 526, Clause (*d*), of the Criminal Procedure Code to the file of a Justice of the Peace (if any) in the City of Mysore. But such a proceeding would of necessity mean both time and money.

Again, according to the sections in the Criminal Procedure Code relating to the European British subjects, a Magistrate, until the accused is brought before him and a preliminary enquiry held, is not in a position to know whether the accused is really a European British subject or not. In such a case, it is conceivable, that a warrant may be issued by a Justice of the Peace in the Civil and Military Station of Bangalore for the arrest of an accused, who is really not a European British subject, on an alleged offence said to have been committed in the City of Mysore. The accused would be brought down to Bangalore under arrest, and on it being proved that he was not a European British subject, he would be released.

At the same time, under present existing circumstances, as only four of the Justices of the Peace in the State of Mysore are *ex-fficio* Justices of the Peace, it would be extremely difficult, for an enactment to be framed so as once and for all to define the jurisdictions exerciseable by the several Justices of the Peace in the State of Mysore.

Originally under the Foreign Jurisdiction and Extradition Act of 1872, the Justices of the Peace within the State of Mysore exercised all the powers conferred upon Magistrates of the First Class who are Justices of the Peace and European British subjects.

The same powers were continued under the Foreign Jurisdiction and Extradition Act of 1879 (Act XXI of 1879). And when the Foreign Jurisdiction and Extradition Act of 1879 was repealed by the Extradition Act of 1903, the appointments already made under the old Act were saved by an Order in Council of His Majesty's, dated the 11th June 1904, and in virtue of the powers conferred by that Order the Governor-General in Council issued a Notification dated the 14th July 1904, No. 2770, F. B, to the effect, "that Justices of the Peace in the State of Mysore should be vested with all the powers conferred by the Code of Criminal Procedure, Act V of 1898, upon Magistrates of the First Class being Justices of the Peace and European British subjects.

A somewhat curious point, is, that prior to the issuing of the Notification No. 2770, F. B., dated the 14th July 1904, the Indian Foreign Jurisdiction and Extradition Act of 1879 was repealed in its entirety by the Indian Extradition Act of 1903 which, according to Section 1, Clause (3), shall come into force on

such day as the Governor-General in Council, by Notification in the *Gazette of India*, may direct.

The Governor-General in Council accordingly passed the following Notification, No. 1861–I. A. "With reference to the Notification of the Government of India in the F. D. No. 1860–I dated the 13th May 1904 and in exercise of the power conferred by Section 1, Sub-section (3)of the Indian Extradition Act, 1903 (Act XV of 1903), the Governor-General in Council is pleased to direct that the said Act shall come into force on the 1st day of June 1904."

The question then arises, as to what powers were Justices of the Peace vested with, from the 1st day of June 1904 up to the 14th July 1904?

The powers exercised by them in virtue of Section 6 of the Foregin Jurisdiction and Extradition Act of 1879, had ceased with the repeal of the Act on the 1st day of June 1904, and their present powers in virtue of the Notification of the Governor-General in Council No. 2770, F. B., dated the 14th July 1904 came into existence only on that date.

Apparently between the 1st June 1904 and the 14th July 1904, Justices of the Peace in the State of Mysore could not try European British subjects for offences committed by them in the State of Mysore, but had to commit them for trial to the High Court of Madras, in virtue of the powers given to them by Notification No. 2616-I dated the 6th August 1890, as read with Notification No. 178-J dated the 23rd September 1874.

The point is of no practical utility; but is interesting, as an instance of the great difficulties to be coped with by the Legislature in order to have an adequate and harmonious system of law.

The Notifications, No. 178-J dated the 23rd September 1874, and No. 2616-I dated the 6th August 1890, however, are not antique specimens of legislation; but are of practical utility at the present day.

Under the former, the High Court of Madras, is vested with original criminal jurisdiction with regard to the trial of offences committed by European British subjects in the State of Mysore, and under the latter European British subjects are committed

by Justices of the Peace in the State of Mysore to stand their trial at the High Court at Madras.

An important point to be noticed is, that both of these Notifications deal only with European British subjects, who are Christians.

The question arises, can a Justice of the Peace in the State of Mysore commit a European British subject who is not a Christian, for an offence committed in the State of Mysore, to stand his trial at the High Court of Madras. There is no decision upon this point ; apparently the point has never been taken up to date.

In *In re Adams*,[1] Mr. *Plumer*, a Justice of the Peace in the State of Mysore, convicted a European British subject for an offence against the Mining Regulations. In appeal before the High Court of Madras, it was argued that according to Section 8 of the Foreign Jurisdiction and Extradition Act of 1879, European British subjects in the State of Mysore could only be tried for such offences as were offences under the Indian Penal Code, and as the offence for which the accused was convicted was one against the Mysore Mining Regulations, the conviction was bad in law, as being made without jurisdiction. His Lordship the Chief Justice, Sir *Arnold White*, in upholding the conviction, said in his judgment, page 611: "The question whether a Justice of the Peace appointed under the Act of 1879 has authority to deal with an offence committed by a European British subject against a law of the Mysore State cannot be determined with reference to the provisions of the Procedure Code. The question involves wider considerations. The first question is, has the Governor-General in Council power and jurisdiction to deal with such an offence? If the answer to this question is in the affirmative, the second question is, is there any legislative enactment which precludes the officer appointed under Section 6 of the Act of 1879 from exercising the power and jurisdiction of the Governor-General in Council?" Answering this question in the negative, His Lordship upheld the conviction of the lower Court.

If this reasoning is correct, then it would seem that the commitment of a European British subject, who is not a Chris-

1. (1903) I. L. R., 26 M, 607.

tian to the High Court of Madras, by a Justice of the Peace in the State of Mysore, for an offence committed there, would be a good commitment in law.

There is no doubt that the Governor-General in Council has power and jurisdiction to vest Justices of the Peace in Mysore with power to commit European British subjects, who are not Christians, for trial to the High Court of Madras, for offences committed in the State of Mysore, and there is no legislative enactment excluding such Justices of the Peace from exercising the power and jurisdiction of the Governor-General in Council.

It has already been stated that the position of a European British subject in the State of Mysore differs in some important respects with the position occupied by an European British subject in British India.

These differences spring from the following two facts :—(1) The two Criminal Procedure Codes in force in the State of Mysore do not contain any provisions relating to European British subjects, and (2) Justices of the Peace in the State of Mysore are appointed by the Governor-General in Council in virtue of his foreign jurisdiction powers, whereas Justices of the Peace in British India are appointed under the Criminal Procedure Code, Act V of 1898, and are as follows :—

(1) A European British subject in the State of Mysore cannot, like a European British subject in British India, waive his right to be tried as such European British subject, under Section 454 of the Criminal Procedure Code.

The two leading cases on the point are : *The Mysore Government* v. *Fuller*[1] and *Churchley* v. *The Government of Mysore*[2].

In the latter case, it was urged by Mr. Grant on behalf of Government, that the Magistrate under Sections 6 and 8 of Act XXI of 1879 had all the powers conferred by the Code of Criminal Procedure in force in British India. But it was pointed out by the Chief Judge, Mr. Justice *Best*, that it was only as "such Justice of the Peace" that the powers conferred by the sections in question could be exercised. As soon as Mr. *Plumer* decided to proceed with the case as a Magistrate of the Kolar Gold Fields, and not as a Justice of the Peace, his proceedings were

1. X Mysore Law Reports p. 281. 2. VI Chief Court Reports (Mysore) p. 75.

under the Code of Criminal Procedure in force in the Mysore Province.

The point turns upon the fact, that Section 454 of the Criminal Procedure Code, as in force in British India, which deals with waiver, is not in force in either Mysore Proper or the Civil and Military Station of Bangalore.

(2) A European British subject who is tried by a Justice of the Peace, who is also a District Magistrate, in the State of Mysore, cannot claim under Section 451 of the Criminal Procedure Code to be tried by a mixed jury.

There is no decision on this point. But it is clear that if the ruling in *Churchley* v. *The Government of Mysore*[1] is good law, that on a similar basis, namely, that this Section 451 of the Criminal Procedure Code is not in force in the State of Mysore, the present proposition is equally sound in law.

(3) A European British subject tried and convicted by a Justice of the Peace, who is also a District Magistrate, in the State of Mysore, cannot be sentenced to more than three months under Section 446 of the Criminal Procedure Code.

It will be seen from the above, that the law governing European British subjects in the State of Mysore is not so clear as it might be, and the position of a European British subject in the Mysore State is anomalous. It seems hard that the privilege accorded by the law to a European British subject in British India to be tried by a Jury, if the trial proceeds before a District Magistrate, should not be extended to European British subjects, in case the offence is committed in the State of Mysore. The right to be tried by a Jury is held in great reverence by every Englishman, and it is difficult to understand why this distinction should exist.

NOTES OF INDIAN CASES.

Churaman Sahu v. Gopi Sahu.—I. L. R. 37 C. 1.—The harshness ascribed to some of the so-called principles of Hindu law is mostly due to the ignorance and pedantry of some of our Judges bound to administer the same. This is illustrated by the decisions regarding the powers of a widow inheriting the

1. VI Chief Courts Reports (Mysore) p. 75.

estate of her deceased husband. Prior to the decision in *Ramaswami Ayyar* v. *Vengidusawmi Ayyar*[1] it was thought that the logical view flowing from a limited estate of a widow was that as soon as the husband died and the estate vested in the widow she was bound to the strictest economy and had no power to make gifts to her children either at the time of marriage or otherwise even though the husband in similar circumstances would have made such gifts. The texts cited in the Madras case cited above as well as in the case under notice afford ample refutation of this view. The *gouna* ceremony or the *dwiragamana* ceremony is the ceremony performed when the young wife, upon the attainment of puberty, leaves her parental home to take up her residence in the house of her husband. It is, therefore, satisfactory to note that the learned Judges have laid down as a sound principle of Hindu Law that a widow is competent to make a valid gift of a reasonable portion of the property inherited by her from her husband to her daughter on the occasion of the *gouna* ceremony. The parties in the case under notice were governed by the Mitakshara Law but we have no doubt that the same principle will hold good under the Dayabhaga Law.

Ram Kumar Shah v. **Ram Gour Shah.**—I. L. R. 37 C. 67:—The head note in this case is somewhat defective as no reference is made to the decision on the question of limitation under Article 62. It may be pointed out that this question was allowed to be argued for the first time in second appeal although it was not raised even in the grounds of second appeal —a procedure quite foreign to our Judges of the Madras High Court.

We should think that when a reference is made to a case which is reported both in the Bengal Law Reports and Sutherland's Weekly Reports, the Reporter should try to give the reference to the Bengal Law Reports. The reference to the case of *Sowdaminee Chowdrain* v. *Kishen Kishor Poddar* is given as 12 W. R. 8, F.B., while it is reported also in 4 B. L. R. 12, F. B.

The learned Judges in the case under notice explained the above case and the case of *Dorab Ally Khan* v. *Executors of Khajah Mohiuddeen*[2] as having been passed under Bengal Regulation VII of 1825 and the Civil Procedure Code of 1859,

1. (1898) 1 I.L.R. 22 M. 113. 2. (1878) I.L.R. 3 C. 806.

respectively, and stated that there was a change of the law under the Code of 1882. We may state that if there was a change it was under the Code of 1877. Cf. *Munnes Singh* v. *Gajadkar Singh.*[1] The rulings under the Code of 1859 proceed upon the principle that the maxim applicable is *caveat emptor* but this maxim cannot be said to have application even to sale of goods under the present English law and can of course have no application to the case of sales of land. With reference to sale of goods it was observed by Mr. Justice *Green* in *Framji Besangi Dustur* v. *Hormasji Pestonji Framji*[2]: "The rule, or alleged rule, of English Law, that there is no implied warranty of title on the sale of a chattel, has been, however, limited by so many exceptions that, as Lord *Campbell* in *Sims* v. *Marryatt*[3] observed, the exceptions 'well nigh eat it up.'" Under the Indian Contract Act this supposed rule of English Law has no application and it has equally no application to sales of immoveable property both under the English Law and the Transfer of Property Act IV of 1882. How this rule or supposed rule can be applied to execution sales in India we fail to see. However, the ruling of the Privy Council in *Dorab Alli Khan* v. *Executors of Khaja Mohiuddeen*[4] proceeds upon a different ground.

If there is no warranty of title in respect of execution sales, and this must be regarded as part of the substantive law, we have to see how far this rule has been changed by the Code of 1877 or 1882 both of which, in this respect, stand on the same footing. The learned Judges in the case under notice refer to S. 313 and state that the enactment in this section considerably weakens the doctrine of *caveat emptor* in execution sales.

S. 313 enacts: "The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein and the Court may make such order as it thinks fit." There is in this section no ground for holding that the doctrine of *caveat emptor* applicable to sales ceases to be applicable generally. The section only enables a party to apply to set aside a sale under certain circumstances. There is, however, no ground for holding that if the purchaser does not choose to apply under

1. (1883) 1 L. R. 5 A. 577.
2. (1887) I.L.R. 2 B. 263.
3. (1851) 17 Q.B. 281; see at p. 291.
4. (1878) I.L.R. 3 C. 806.

the section he has any remedy to recover the purchase-money paid by him under the circumstances which would enable him to apply to the Court to set aside the sale under the section. Reference is then made to S. 315, but we think this section does not warrant the view that a suit lies for the purpose. The last clause of this section shows that the refund of the purchase-money can only be made in execution or by application to the Court. This clause enacts : " The repayment of the said purchase money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money." It is said that this section or S. 313 does not bar a suit. Even if it were so, it does not follow that a suit will lie. It being the general law that no remedy whether by way of execution or by suit lies to a purchaser for recovery of purchase-money on the ground that the judgment-debtor has no saleable interest and Ss. 313 and 315 being only applicable to a particular kind of remedy, *viz.*, by way of application or execution, there is no necessity for creating an express bar to the institution of suits by Ss. 313 and 315.

There is, however, another possible view. It may be said that S. 315 itself confers a right of suit, and reliance may be placed upon the 2nd and 3rd paragraphs of S. 315 which run as follows : ' or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it, the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase money has been paid'. This must, however, be taken along with the last paragraph of the section already quoted, and we think the only reasonable view to take of the section is that it confers only a right to apply and not a right of suit. There can be no doubt that this is the only reasonable view if the second paragraph is absent. It is said that the introduction of the second paragraph can only be justified upon the ground that its language contemplates a separate suit. Without saying that the introduction of that paragraph is redundant we may say that the language of that para does not lead one to conclude that it is intended to cover cases

of suits. Under S. 313 although a purchaser may apply to set aside a sale on the ground that the person whose property has been purported to be sold has no saleable interest therein, the Court need not set aside the sale. The section enacts that '*the Court may make such order as it thinks fit.*' The language of the second paragraph of S. 315 is intended to cover cases in which the Court does not set aside a sale notwithstanding that the judgment-debtor has no saleable interest. We need not now pause to inquire whether under S. 315 there is power to refund a portion of the purchase-money in a case where it is found that a judgment-debtor has no saleable interest in a part of the property sold or whether the language of the second paragraph of that section is sufficiently explicit to meet such a case.

Holding, therefore, as the learned Judges in the case under notice do, that the purchaser is entitled to a refund of the purchase-money under Ss. 313 and 315 it is difficult to reconcile their decision that the remedy of the purchaser is by suit. The case of *Sundara Gopalan* v. *Venkata Varada Aiyangar*[1] was cited before the learned Judges but they refused to follow it on the ground that in two other cases before the Calcutta Court a different view was taken. It may be added that the Allahabad Court has also taken a different view—see *Shanto Chandar Mukerji* v. *Nain Sukh*[2] and the cases cited therein and Cf. also *Sumer Cand* v. *Wahid Hussain*[3]—and that in the case of *Sundara Gopalan* v. *Venkata Varada Aiyangar*[1] no question has been raised and so far as we can see, there is no decision that no remedy lies by suit. The question in the Madras case was entirely different. In *Pachayappan* v. *Narayana*[4] it is assumed that a suit will lie. As regards the first Calcutta case, *Hari Dayal Singh* v. *Sheik Samsuddin*,[5] the learned Judges who decided it assumed that there was a right in the auction-purchaser to claim a refund by suit and that this right was recognized by S. 315. We have already dealt with this aspect of the question. In the other Calcutta case *Nityanund Roy* v. *Juggut Chundra Guhe*[6] it is only said that S. 315 does not bar a suit unlike S. 244. See also *Surendra Nath Ghose* v. *Beni Madhal Misra*.[7]

1. (1893) I. L. R. 17 M. 228.
2. (1901) I. L. R. 23 A. 355.
3. (1906) 3 A.L.J. 819 (825).
4. (1887) I.L.R. 11 M. 269 (273).
5. (1900) 5 C. W. N. 210.
6. (1902) 7 C. W. N. 105.
7. (1905) 10 C.W.N. 274.

We think the language of the present order as enacted in O. XXI, r. 93, shews that the construction of S. 315 which we contend for is the correct one. The rule runs thus: 'Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to *an order for payment* of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Dayanath Thakur v. Emperor.—I. L. R. 37 C. 72.—Proceedings to take security for keeping the peace for good behaviour have for their object the prevention of offences. The duties of Magistrates in this connection may properly be said to come under administrative duties, such duties being more or less Police duties. This, however, is no test in the consideration of the question whether the proceedings under the Criminal Procedure Code in respect of the above matters are judicial proceedings within the meaning of certain sections of the Penal Code.

The term "judicial proceeding" is not defined in any of the sections of the Penal Code. It is defined in S. 4 (*m*) of the Criminal Procedure Code as "any proceeding in the course of which evidence is or may be legally taken on oath." We think the expression as used in the Penal Code may be taken in the sense in which it has been used in the Criminal Procedure Code and the proceedings taken in the first instance under Ss. 106 to 110 of the Criminal Procedure Code are undoubtedly judicial proceedings. This reasoning may not exactly apply to S. 125 of the Criminal Procedure Code. It may be taken as correct that the jurisdiction of the District Magistrate under this section is not confined to grounds which come into existence after the date of the order. He has the power to set aside or cancel a bond on the ground that the original Magistrate was wrong in having passed the order, or was not justified under the circumstances in passing an order, but that does not mean that he is not entitled to take evidence. The jurisdiction conferred upon a Magistrate under S. 125 may be said to be both original and appellate or revisional, but whatever may be the nature of the jurisdiction there is nothing in law to prevent a Magistrate from taking evidence, and where a proceeding is such that a Magistrate is entitled to take evidence on oath such proceeding is judicial. The decision in the case under notice may, however, be justified on the

ground that the proceeding under S. 125 has to be regarded as merely ministerial, that under it there is no appeal against an order under S. 118 directing a person to give security for good behaviour, and that although the Magistrate may be legally entitled to take evidence he cannot compel any person to attend and give evidence before him. There may be some ground for such contention. However, it is not upon this ground that the learned Judges decided this case. It must, however, be remembered that S. 125 requires the District Magistrate to record his reasons for cancelling a bond already taken The object, we think, is to enable the High Court to look into the sufficiency of reasons in the exercise of their revisional powers both under the Code and the Charter Act. On the whole, therefore, we have considerable doubts as to the soundness of the view taken in the case.

Narki v. Lal Sahu.—I. L. R. 37 C. 103.—This case illustrates well, the effect of the accident of a person being a plaintiff in a Court of Justice. According to S. 108 of the Evidence Act when a person has not been heard of for 7 years by those who naturally would have heard of him if he had been alive, he may be presumed to be dead, but, as has been held in more cases than one, the presumption is that he is dead when the suit is instituted in which case the question arises and there is no presumption as to the time of his death, *i.e.*, that the person who is presumed to be dead died at any particular time. Hence a person who has to establish his title by proving the time of death must establish this fact as he must all other facts. The decision in the case under notice only illustrates this principle.

SUMMARY OF ENGLISH CASES.

Russel v. Amalgamated Society of Carpenters and Joiners. [1910] 1. K. B. 506 (C. A.)

Trade Union—Undue restraint of trade—Illegality—Rules of society—Right to claim benefit under the rules—Separableness of rules—Enforcement of right to benefit.

The main rules of a society were for militant purposes of a trade union, Other rules provided for a provident friendly society,

On a refusal to comply with the committee's direction in respect of the object of the former set of rules a member was liable to be expelled and to lose all his money and benefits under the latter rules.

On a claim, by the widow of a member as his legal representative, for sharing the benefit under the rules governing the latter object:

Held, upholding the defence, that the main object of the society, as shown by its rules, being in undue restraint of trade, and the first object of the society being *inseparably* connected by the rules with its second object, for both of which there was only one fund, (1) the society was an illegal one, and (2) the plaintiff could not recover.

Per *Curiam*.—The rules must be considered as a whole and the main object of the society ascertained.

If the whole object of the society is one which involves such a restraint of trade as to render its rules as a whole unenforceable, individual rules, which taken by themselves might be unobjectionable, are not enforceable.

A strike is not necessarily unlawful, but a strike may be so conducted as to be not only unlawful but criminal. Every contract in general restraint of trade without limit is bad, but a partial restraint, limited so far as to afford reasonable protection only to either or both of the contracting parties, and so as not to be injurious *to the public*, is good.

If there were two distinct sets of rules constituting two distinct contracts with separate funds applicable respectively to militant and beneficent purposes, exclusively, each of the other, the case might be different.

In re **Taylor**—*Ex parte* **Norvell**. [1910] 1 K. B. 562 (C. A.).

Bankruptcy—Contract to sell before bankruptcy—Suit for specific performance after bankruptcy—Set off—Whether balance of purchase-money can be set off against money due to purchaser.

The plaintiff contracted to buy certain houses from *A* before *A* became a bankrupt and without notice of any act of bankruptcy on *A*'s part. Under the contract about five-sixths of the purchase-money was payable on completion of sale. After *A*'s bankruptcy *A* sued for specific performance against the trustee in bankruptcy and contended that certain moneys due to him from *A* should be set off against the balance of purchase-money.

Held by the Divisional Court and Court of Appeal (*Fletcher Moulton* L. J. dissenting) that the amount can be set off as "balance of account" between the plaintiff and *A* within the meaning of S. 38 of the Bankruptcy Act.

Per *Fletcher Moulton* L. J.—The balance of purchase-money under the contract was not money payable to the bankrupt before his bankruptcy and so was not an amount due to *him* so as to be set off. It was an amount which might become payable only in case of a successful suit for specific performance, and that too to the trustee in bankruptcy.

Parkinson *v.* Garstang and Knott End Railway.

[1910] 1 K. B. 615.

Railway—Level-crossing—No gates—Stray horse—Injury —Liability.

Owing to the defendant Railway Company, which was under a statutory liability to put gates at level-crossings even with regard to foot-paths, etc., not having provided a proper gate at the crossing of a foot-path, the plaintiff's horse, which happened to stray on the line, by going along the foot-path was killed by a train. The plaintiff was not the owner of the field adjoining the line.

Held that the obligation was statutory; that the duty to have a proper gate was not in respect of foot-passengers alone but extended also to animals; that it was immaterial that the plaintiff was not the owner or occupier of the adjacent land; that the plaintiff, not knowing that if by reason of the defective gate in his own land his horse got out of his field it would necessarily

get on to the railway owing to the railway gate also being defective, was not guilty of contributory negligence, and the plaintiff was entitled to succeed.

Gray v. Owen. [1910] 1 K.B. 622.

Landlord and tenant—Determination of lease on a contingency—Actual determination without contingency—Surrender of lease—Liability for rent.

One of the conditions under which the defendant, a naval officer, was let into the plaintiff's house was that the lease might be determined on 3 months' notice in case of defendant's transfer. A transfer was ordered but it was afterwards cancelled. The defendant though knowing the cancellation, gave the 3 month's notice *bona fide* believing that he was entitled to do so, and the plaintiff, in ignorance of the cancellation, accepted possession of the house but was not afterwards able to sell or re-let. In a suit for rent for 6 months after knowing the truth:

Held (1) that the contingency on which alone the defendant could have terminated the lease not having occurred, the defendant was guilty of breach of contract; (2) that there being no intention to deceive when giving notice, the fact that the plaintiff was misled by the defendant's act did not prevent his acceptance of the surrender as a determination of the tenancy; but (3) that the acceptance of the surrender did not preclude the plaintiff from suing for damages for breach of contract, which would be the amount of rent he had lost.

Gundry *v.* Sainsbury. [1910] 1. K. B. 645 (C. A.)

Costs—Agreement between client and solicitor not to pay costs—No right to costs against opponent.

" Costs as between party and party are given by the law as an indemnity to the person entitled to them; they are not imposed as a punishment on the party who pays them nor given as a bonus to the party who receives them. Therefore if the extent of the damnification can be found out, the extent to which costs ought to be allowed is also ascertained."

Therefore where there is an agreement between the client and the solicitor that nothing should be paid to the solicitor for costs, the Court ought not to award costs to that client if succesful.

Ching v. Surrey County Council.

[1910] 1. K. B. 736. (C. A.)

Negligence—School Board—Hole in the school play ground—Injury to student—Liability of School Board.

A School Board, who had a statutory duty to" maintain and keep efficient "the school maintained by them, transferred, under the statute, the school and everything connected with it to the defendants. After the transfer a school boy running and playing in the play-ground of the school had his foot caught in a hole therein and was injured:

Held that the duty to maintain and keep the school efficient included a duty to keep not only the school, *i.e.*, scholastic system, but also the school premises, which included the playground, in proper condition and the transfer of the school with all its liabilities included also the liability for such negligence as the one in question.

Tilley v. Bowman, Ltd. [1910] I.K.B. 745.

Bankruptcy—Sale of goods—Contract induced by purchaser's fraud—Bankruptcy of purchaser—Vendor's right to rescind thereafter—Title of Trustee in Bankruptcy—Mutual dealing—Set off—Damages for fraud

A contract of purchase was induced by the fraud of the purchaser who, after pawning for £ 300 to a stranger the goods brought and paying £ 181 in part payment of the price became a bankrupt. The vendor then claimed to rescind the contract and recovered the goods from the pawnee on payment of £ 300. Thereupon the Trustee in Bankruptcy claiming title in himself to the goods sued (1) to recover them or their value after giving credit for £300 or (2) to be paid back £ 181.

Held that the suit must be dismissed in respect of both claims for (1) the contract having been induced by the fraud of the purchaser the right of his trustee to the goods was only subject to the right of the vendor to rescind, who on rescission acquired a valid title to the same, there being no difference in law whether the rescission was made before or after the vesting order, and (2) the vendor having a right to get damages for the fraud of the purchaser whose conduct resulted in a loss of £ 300, he was entitled to set off this amount against £ 181.

Heaton *v.* **Goldney.** [1910] 1. K.B. 754 (C.A.).

Practice—Interrogatories—Defamation—Innuendo—Interrogatory as to whether defendant did not use the words complained of in the sense of the innuendo.

In an action for defamation the plaintiff tendered certain interrogatories to the effect whether the defendant did not use the words complained of in the sense suggested by the plaintiff's innuendo: *Held* that the interrogatories ought not to be allowed, as being oppressive and improper, the grounds suggested for their allowance, *viz.*, (1) that they would, if admitted, show malice, (2) that they would bear on the question of damages, and (3) that they show the conduct of the defendant in relation to the case, being legally insufficient.

JOTTINGS AND CUTTINGS.

Hardworking Judges.—According to an English Physician, of high repute nobody works harder than a Judge. "The most intricate mental processes," he says, "are in progress all the time he is hearing a case. He has, for instance, to analyse and dissect all that he hears. Nothing is more mentally fatiguing.

"No brain work that I can imagine could make greater demands. Not once, of course, must the Judge's attention flag. If it does so, he is neglecting his duty. For this reason, a Judge should never continue sitting when he is tired. A fatigued Judge cannot, however much he tries, keep the grip of a case that he does when he is mentally and physically fresh.

"If a Judge begins his sitting at 10-30 A.M. and adjourns for half an hour for lunch, he should certainly not work after 4 P.M. Also, in my view, a Saturday and Sunday rest is essential for a Judge. As regards vacations, I do not think those now in vogue are in any way too long."—*Green Bag.*

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Useless but Entertaining.—"You are charged with larceny. Are you guilty, or not guilty?"

"Not guilty. I thought I was, but I've been talkin' to my lawyer, an he's convinced me that I ain't."

Magistrate (discharging prisoner).—"Thank you, Sir, you won't see me here again."—*Ibid.*

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Judges' Contributions to Legal Literature.—Mr. Justice Scrutton, whose work on the *Law of Copyright* is one of the best known of modern law books, is (says the *Globe*) an addition to the dwindling number of Judges who have made notable contributions to legal literature. In the Court of Appeal there are three legal writers of high repute. Lord Justice Buckley is the author of a famous book on *Company Law*, Lord Justice Farwell of a treatise on *Powers*, and Lord Justice Vaughan Williams of a work on *Bankruptcy Law*. The contributors to the legal literature in the King's Bench Division are, apart from the newly appointed Judge, better known as editors than as original authors. Mr. Justice Phillimore has edited his father's book on *Ecclesiastical Law*, Mr. Justice Bucknill is one of the editors of *Abbot on Shipping*, and Mr. Justice Hamilton is responsible for an edition of *Lee's Practical Digest of the Merchant Shipping Acts*. No Judge in the Chancery Division helped to make his reputation by writing a law book. It was different in the days of Lord Lindley and Sir Edward Fry, the first of whom laid the foundations of his reputation with his classic work on *Partnership Law* and the second with his equally famous book on *Specific Performance*. Few of the existing occupants of the Bench have wandered in the more pleasant paths of authorship. Mr. Justice Darling has given four

delightful volumes to the world—'Scintillæ Juris,' 'Meditations in the Tea Room,' 'Seria Ludo' and 'On the Oxford Circuit.' He is not the only poet among the Judges. Mr. Justice Ridley has found time, while he has been an occupant of the Bench, to prepare a second edition of his blank verse translation of Lucan's *Pharsalia*. The only other Judge who in recent years has written a non-legal book is Mr. Justice Coleridge, who presided at the banquet at which the descendants of England's poets foregathered the other day. He has performed a pious task by writing 'The Story of a Devonshire House.'—*Law Journal.*

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Madras Act passed.—Landlord and Tenant.—The Madras Estates Land Act, 1908 (No. 1) was the single achievement of the Madras Legislature in 1908, but it is a very important and difficult Act—perhaps the most important that has come before the Legislature since the Regulations of 1802. It is one of those great and comprehensive measures for regulating the relations between landholders and occupiers of land which from time to time occupy the attention of the Indian Legislatures, and raise some of the most contentious and thorny of the problems with which they have to deal. The Madras Act of 1908 resembles, in many of its features, the Bengal Tenancy Act of 1885, and some of the most important provisions of the former Act are borrowed from or suggested by the earlier Bengal Act. The necessity for some legislation on these lines appears to have been first suggested in the year 1871 by a High Court decision in what was known as *Chockalingam's Case*, but it was not until 1882 that the draft of a Bill on the subject was prepared. Then followed the successive drafts, the mass of reports and criticisms, and the correspondence with the Government of India, with which Indian legislators are familiar; and at last the Bill, which eventually became the Act of 1908 was in 1905 introduced into the Madras Council by Mr. (now Sir George) Forbes, who may fairly claim to be the author of the Act. The Bill went before a Select Committee, which sat for 6 days, and some two years elapsed subsequently before it was again submitted to the Council. When it returned there, it was debated with great fullness, knowledge and ability, and the reports of these debates

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are full of interest and instruction to students of the peculiarities of Indian land tenures. The provisions of the Act are as difficult to summarise briefly and intelligibly as those of an Irish Land Act, and it may suffice to state what, in the opinion of Mr. Forbes, are the fundamental principles of the measure. According to him they are these :—The securing of the ryot's occupancy right in "ryoti" land ; the clear definition of ryoti and private land, and the strict conservation of the former as being the land in the estate in respect of which occupancy rights can be secured ; the right of the ryot to hold at a regulated and not a contract or rack rent ; the preservation of ryoti rights in the waste lands; the securing to the landholder a first charge upon the land for the rent due to him, also the right to enhance money rents on certain grounds ; the ryot's right of commuting a grain rent into a money rent ; the provision of a suitable procedure for empowering the Government to make a record of rights and to settle rents ; and, finally, the adjudication generally of disputes between landholders and ryots by the Revenue Courts, at any rate in the first instance. He went on to explain that the so-called "private lands" are allotments, free from all public charges, which were specially assigned by the Mussalman Government to the Zemindars in making settlements of revenue with them. These lands were the remuneration, or rather part of the remuneration, which the Zemindar received for collecting the Government revenues and maintaining public order in the Zemindari, and rendering such other services as the settlement imposed upon him. All other lands were ryoti, or lands which a ryot could occupy, on the customary terms, and the revenue of which was taken into account in fixing the annual payment of the Zemindar to the Government. The Zemindar naturally endeavoured to extend, as far as he could, the class of " private lands," and thus restrict the range of occupancy rights. One is reminded of the controversies which have raged over the different classes of Irish lands. —*The Journal of the Society of Comparative Legislation.*

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The Late King.—The sudden passing away of His Late Majesty King Edward VII has been treated by all

sections of his subjects, and by great masses of men in countries over which he held no rule but that of the Peace-Maker, as a personal bereavement. To the legal world the loss is especially intimate, not only on account of his early association with it as Barrister and Bencher, but because also of the interest which he showed in all its activities. His influence on legislation may only have been indirect, but it was none the less great, and he bade fair to rival in the importance and range of his statutes the first of the Edwards, who achieved the title of 'The English Justinian.' The Lord Chief Justice and the President of the Probate Division have both borne dignified testimony to the services which His Majesty rendered the country by his constant labours for the furtherance of every just cause; but perhaps his highest claim for lawyers is, as the Attorney-General finely expressed it, that he proved by his life that a constitutional monarch has a better claim to the affection of his subjects than any other, in that 'his sovereignty guards not only the social, but the political order of the people.'—*The Law Journal.*

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King George V.—The close association of the Crown with the profession of the Law will be continued by the new King, who is well known to be a serious student of the Constitution, and has taken part on more than one great occasion in its larger developments in the Dominions of the Crown. His knowledge of the working of the new institutions which he has personally inaugurated in those Dominions beyond the seas will stand him in good stead in the changes which the movement for the federation of the Empire, no less than the spread of the democratic spirit within the United Kingdom, promises to bring about in the immediate future. The spirit of the Constitution, which, as the Attorney-General said, is 'woven into the very history of his race,' will guide him in dealing with the great Constitutional problems in which he must inevitably bear a great part, and his reign will be glorious, indeed, even above that of his predecessors, if he is enabled to bring these to a peaceful solution with the aid of wise counsellors from all parties in the State and with the good-will of all his subjects.—*Ibid.*

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King Edward and The Law.—By no occupant of the throne has the profession of the law been so honoured as by the late

King. It was in 1861, when, as Prince of Wales, he opened the Library of the Middle Temple, that he was called to the Bar and became a Bencher. His Majesty, who had been for some time the Senior Bencher of the Inn, made more than one notable visit to its ancient Hall both before and after he filled the office of Treasurer in 1887. He was present at the Grand Day Dinner in 1885, when the late Prince Albert Victor became a Member and Bencher of the Inn. The most memorable of His Majesty's visits was in 1903, when, as Sovereign and as Bencher, he dined in Hall. This was an unprecedented event in the annals of the Inns. No other occupant of the Throne had ever dined in the Inns of Court in his capacity as Bencher; indeed, no other English monarch had dined in Hall since Charles II went to Lincoln's Inn in 1671. The late King's relations with the legal profession were not confined to the Bar. Accompanied by Queen Alexandra, he opened the new wing of the Law Society's Hall in Chancery Lane in 1904, when he was graciously pleased to say: 'I have the greatest interest in the advance of your profession, knowing how much you contribute to the proper administration of our laws.' His Majesty again displayed his interest in the administration of justice by opening the new Central Criminal Court in 1907, when he made a notable speech testifying to the more humane spirit of the criminal law. 'It is well that crime should be punished, but it is better that the criminal should be reformed,' were the wise words with which he emphasised the true significance of the occasion. While his relations with the legal profession must, as the Attorney-General observed, have been insignificant in the King's life, they will have a conspicuous and enduring place in the annals of the profession he was graciously pleased to honour.—*The Law Journal.*

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King George as a Bencher.—It is still the proud distinction of the Bar to be able to claim the Sovereign among its members. King George V, who, among the vast array of his subjects, has none more sincere and loyal in their homage than the lawyers in the various parts of the Empire, is a Bencher of Lincoln's Inn. His Majesty is not the only occupant of the throne who has been a member of the Inn. It is recorded in the 'Black Books' of Lincoln's Inn that Charles I, after the famous banquet at which

he was entertained in 1671, 'to doe transcendant Honour and Grace to the Society, was pleased to command the Booke of Admittances to be brought to him, and with his owne hand entered his Royall name therein, most gratiously condiscending to make himselfe a member thereof.' But the present King has done the Inn a greater honour, for he occupied the office of Treasurer in 1904. A portrait of King Edward in his Bencher's robes, painted by the late Mr. Frank Holl, R.A., is among the treasured possessions of the Middle Temple; a portrait of King George, similarly attired, painted by Mr. Ouless, R.A., in 1905, will help to preserve in Lincoln's Inn the memory of his Majesty's year of office as Treasurer.—*The Law Journal.*

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The Legislation of Edward VII.—Though the reign of King Edward VII was all too short, yet it has left a deep impress on the legislation of the United Kingdom; and the statutes of the nine years which bear his name mark striking reforms and innovations in nearly every department of the national life. The output of laws was indeed curiously unequal in the first and second halves of the reign. During the years 1901-5 the annual volume of statutes is slender and mostly filled with small amending Acts; during the last four years it has waxed stouter and more solid, reaching its largest proportions in 1908, when there was more legislation than in any year since 1875. It is fitting first to deal with those statutes in which King Edward himself played an important part. The most notable of them and the permanent record in the legal annals of the Empire of his noble *role* as the world's peacemaker is the Act for carrying into effect a Convention between His Majesty and the President of the French Republic (4 Edw. VII, C. 33). By this Act the Convention, signed at London on April 8, 1904, which settled the points of difference between the two Powers in Newfoundland and Africa, was ratified by Parliament. The Osborne Estates Act of 1901 records the late King's munificent bequest to the nation of his mother's estate for the purpose of a home and a training school for naval officers. The Demise of the Crown Act of the same year provides that the death of the Sovereign shall not affect the holding of any office under the Crown as it had done previous to King Edward's reign; and another Act of 1901 gave the King power to make additional

royal titles, in virtue of which he assumed the new dignity of King of the British Dominions beyond the Seas, and thus marked outwardly the unity of the whole Empire through the person of the Sovereign. Other Imperial Statutes of the reign of great moment are the South Africa Act and the India Councils Act, both of last year. By the first the federation and union of those Dominions, which had barely ceased from a bitter inter-racial war when King Edward came to the throne, have been strikingly accomplished; by the second the first steps of Parliamentary Government have been laid in our Indian Empire. The condition of Ireland, too, has been vastly improved by the two Land Acts of 1903 and 1909, by which the peasantry are enabled to secure their holdings from the landlords through the assistance of the State Treasury; and the Irish Universities Act of 1908, which provides for the foundation of two new universities and the dissolution of Queen's College, Belfast, removed a long-standing grievance.—*The Law Journal.*

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Domestic Statutes of the Reign.—Turning to legislation which affected social conditions in the United Kingdom, a number of measures of reform have been passed. The Trades Disputes Act, 1906, and the Trade Boards and Labour Exchanges Act of 1909 strengthen the position of the working classes and protect them from pressure by their masters; the Old Age Pensions Act, 1908, provides for their wants in old age; while the Workmen's Compensation Act of 1906 greatly extends the liability of employers for accidents happening to their employees, so as to cover almost the whole working community. The conditions of the people are improved, too, in the towns by the Housing and Town-planning Act of last year, and in the country by the Small Holdings Act and the Agricultural Holdings Act of 1908. It is noteworthy that King Edward VII sat as an ordinary member on the Royal Commission upon the Housing of the People, whose report formed the basis of the principal part of this legislation. The licensing system of the country was greatly reformed by the Act of 1902; and the education system, which had been hitherto conducted upon two independent and competing lines, was unified by the Act of the same year. The law as regards the protection of young children

was largely amplified and then codified by the Children Act of 1908; while the right of women to take part in public life was recognised in the Education Act, which provides that they may sit on local education committees, and in the County and Borough Councils Act of 1907, by which they are qualified to act as councillors and aldermen. A minor social reform in which the King had taken personal interest was the legalising of marriage with a deceased wife's sister by the Act of 1907. The laws with regard to Merchant Shipping, Marine Insurance, the Post-Office, Patents and Designs, and Limited Companies were consolidated after amendment by statutes passed between 1906 and 1908, and thus a great advance was made in the work of codifying the commercial law of the country. Important changes also were made in the administration of law, in England by the Criminal Appeals Act, 1907, and the County Courts Act of 1903, which extended the jurisdiction of these Courts to many cases previously dealt with only in the High Court of Justice; and in Scotland by the Summary Jurisdiction Act, 1907, and an Act for amending the Civil Procedure of the Sheriff's Court, 1907. Important administrative reforms were the reorganisation of the London Docks by the Port of London Act, 1908, and of the voluntary defensive army by the Territorial Forces Act, 1907. And lastly must be mentioned the important changes made in the fiscal system of the country by the Finance Act, 1909-10, which only received the Royal assent a few days before the King's death.—*The Law Journal.*

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The late King.—Tributes from the Bench and the Bar.—THE LORD CHIEF JUSTICE, after the ceremony of the swearing-in of the King's Bench Judges was ended on Monday morning, said: On January 24, 1901, standing in this place on the occasion of the death of Her Majesty Queen Victoria, I referred to the speech King Edward VII made on the day previous. I quote to-day one passage from that speech. His Majesty's words were: 'I am fully determined as long as there is breath in my body to work for the good and amelioration of my people.' The record of the work of his Majesty King Edward VII during the last nine years shows indeed a more than ample fulfilment of that determination. Truly it may be said of him in the fullest

meaning of those words, 'He worked for the good and amelioration of his people.' This is not the time or place to attempt to note any of his many great services to the nation and Empire. We his subjects as yet cannot fully appreciate our loss, and we have not recovered from the blow sustained by the sudden death of him from whom the Empire and the civilised world looked forward to many years of prudent counsel. It is, however, not unfitting to observe that by his wise. and far-seeing influence he did much to promote with many of the civilised nations of the world that spirit of friendship and good-will which is the greatest safeguard against international differences and misunderstandings. Generations to come will recognise how increasingly and earnestly King Edward VII laboured in the cause of peace. To our Sovereign Lord King George V we have but a moment ago taken our oath of allegiance. His words on Saturday will have touched the heart of the nation. May he be given health and strength to bear the burden of the great duties and responsibilities which have so suddenly develoved upon him. May we, by our loyalty and devotion to the Crown, and by our steadfast observance of the laws of this country, do our utmost, each in his own sphere, to protect and advance the best interests of the people over whom he reigns.

SIR W. S. ROBSON, K.C., M.P., on behalf of the Bar, said: Allow me, on behalf of the Bar, to say how sincerely and profoundly we share the feelings and the wishes which your Lordship has so well expressed. We speak in this regard not only with the loyal sorrow felt by all professions and conditions of men in this realm at the loss of their Sovereign, but also with something of a personal note, for his late Majesty was called to the Bar at one of the Inns of Court. That was in 1861, a date which may be described as marking his definite entry into public affairs. He became a Bencher of the Inn to which he belonged, the Middle Temple, and on many occasions during his life showed how keen and how friendly was the interest which he took in our profession. That, I dare say, is a small matter in the life of a King, but it is very significant when it is regarded, as it should be regarded, as illustrating the interest which he took in all the varied phases of the national life in which he was called upon to fill so great a place. It is a specially valued instance, so far

as we are concerned, of the personal, vital character he gave to his association with the interests of his people. Your Lordship has quoted the noble passage from one of the earliest utterances he made as King, in which he pledged himself to give all the power he possessed to the welfare and amelioration of his people. Your Lordship has said that he kept his word, and that is the deliberate verdict also of the nation and the Empire; it is a sufficient epitaph, and he could have no better. You have referred to his work. He was in truth a working King, and none the less effectively a working King because he shared with such freedom and gracious geniality in all the pleasures of his subjects. I would not attempt, for this is neither the time nor place, to deal with instances of his beneficent labours, but there is scarcely a section or a considerable class in the whole community which could not point to some manifestation of his sympathetic interest. He was a King content with no formal work, but brought to his labours all the sympathetic spirit which endeared him and added to the value of those labours; for instance, his interest in the housing questions occurs to the mind of us all. Your Lordship has laid no more than just stress on the remarkable way in which his personal qualities enabled him to remove misunderstandings which might have been fatal to the peace of the world, and it is this part of his work which makes sorrow for him now more than National and more than Imperial. With all his activities he was anxious and resolute to maintain those traditions which are established by our unwritten law in regard to action by the Crown. That was part of the promise he gave his people. That promise he well kept, and it lies at the very root of our government. I think we are entitled, and entitled as lawyers, to say that a constitutional Monarch has a better claim to the affection of his subjects than any other, for his sovereignty guards not only the social order of his people, but their political liberty. We respond with all our hearts to your earnest words invoking our loyalty to King George V. He will inherit, I have no doubt, all the loyalty which has centred round the throne of his father. His life has been nurtured in the spirit of the Constitution; its traditions are his traditions. We welcome his accession with absolute confidence, and with 400 millions of his subjects we join your Lordship in wishing him a long, happy and glorious reign.

SIR SAMUEL EVANS (President of the Probate, Divorce and Admiralty Division) who was accompanied on the Bench by Mr. Justice Bargrave Deane, said: We cannot begin the work of this Division in the new reign without giving some expression to our feelings in the sad calamity which has befallen our country in the passing away of his late Majesty King Edward VII. Silence best befits such a sorrow, and at such times words are feeble things. Never did a King rule more in the affection of his people. The nation's heart is therefore heavy, and it mourns with genuine grief. His reign was all too short, and the loss seems almost irreparable. His Majesty's own dominions were vast, but his influence extended far beyond these. It was international and world-wide, and always a force for good. The late King has been gathered to his fathers, but he leaves behind him a glorious example and memory as a great constitutional Sovereign, a sagacious ruler, a commanding personality, a friend of his people, and a benefactor of mankind.

SIR RUFUS ISAACS, K.C., M.P., said: On behalf of the Bar I desire to associate myself with all those expressions which have fallen from your Lordship in reference to his late Majesty, in which you have described so well his great personality. I desire, on behalf of the Bar, to use very few words, and to say that we recognise we have lost a great King who loved his people, who was ever working for their advantage, ever toiling in the cause of peace and good-will among men and nations, and of whom it will always be said throughout his life and up to the lastmoment that he nobly did his duty.—*The Law Journal.*

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Saturday in the Courts.—There is no break in the tendency to strike Saturday out of the judicial calendar. Only eleven Judges deemed it necessary to discharge their judicial duties last Saturday—three in the Court of Appeal, five in the King's Bench Division, and three in the Chancery Courts. The 'beggarly array' of empty Courts which is usually to be witnessed at the Royal Courts of Justice on Saturdays has not escaped the vigilant eyes of those members of the House of Commons who are seeking to impede the progress of the Additional Judges Bill. There is, however, a division of opinion on the subject. Mr. Martin, K. C., for instance, seeks to insert a provision that

'a judge so appointed shall retire from his appointment if he absents himself from his duties on Saturdays habitually for week-end recreation'; while Mr. Markham is inviting the House to declare that 'a judge so appointed shall retire from his appointment if he absents himself from his duties before four o'clock on Fridays on two occasions in any term, except for medical reasons or for other reasons approved and sanctioned by the Lord Chancellor.' The Legislature, if it were to adopt Mr. Markham's amendment without adopting Mr. Martin's would indicate pretty clearly that Saturday sittings were unnecessary. For our part, we believe that, with a shortening of the Long Vacation, all the Courts might advantageously be closed on Saturdays; but nobody can be surprised if the irregularity which now prevails is regarded as unworthy the traditions of the Bench.—*The Law Journal.*

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Fugitive Offender's Right to a Jury.—The writ of *habeas corpus* does not seem to have the same potency in protecting the subject from the arbitrary will of the Executive which it had of old in protecting him from the oppression of the Sovereign. Its aid, indeed, has been invoked recently in several striking cases, but without much success. A few months ago the Divisional Court and the Court of Appeal discharged the order for the writ to bring up the body of the African chief Sekgome, who has been detained for some years in custody in virtue of a proclamation issued by the governor, which took away any right of trial in the Courts of the protectorate. And last week, again, the Divisional Court, in the case of *Ex parte Vinayak Damodar Savarkar*, discharged a rule *nisi* for a writ which had been obtained at the instance of an Indian student, who had been committed for removal to India under the Fugitive Offenders Act, 1881, and claimed to be tried before the English Courts. The facts are dealt with in another column. On the legal aspects of the case it has to be observed that S. 2 of the Act of 1881 provides only for the return to their own country for trial of persons who are fugitives from justice. It was urged with much force for the applicant that he was not a fugitive, since the Executive had deliberately taken no notice of his speeches in India in 1906 with which he was now charged. The

Court, however, held that under S. 33 of the Act he could be sent back to India to be tried for the original as well as subsequent offences charged against him, though there was jurisdiction to try him for those latter offences here. It was further urged on the accused's behalf that by S. 10 the Court had a discretion in ordering the return of the offender where it would be unjust or oppressive to do so, and that this discretion should be exercised here, because in India, the applicant would not be able to call his witnesses and would be tried before a special Commission of three judges without a jury. The Court refused this plea on the ground that it could not say that any legal tribunal in the Empire was unjust and oppressive. We cannot help thinking that Mr. Justice Coleridge was justified in his doubts about this part of the decision at least, and that as the Indian law undoubtedly suspends some of the ordinary rights of the subject, it was open to the Court to hold that to return him to that country to stand his trial for offences really committed here was an oppressive act of the Executive which the English Courts could and should have prevented.—*The Law Journal.*

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Magistrates' Law Fugitive Offenders.—After having cause shown in *Ex parte Savarkar* (*ante*, p. 358), the King's Bench Division on June 3 discharged the rule for a *habeas corpus* and refused to interfere with the committal of Savarkar to await his return for trial in India for offences alleged to have been committed by him against the Indian Penal Code. The judgment of the Court was not rested on the interpretation of section 2 of the Fugitive Offenders Act 1881, the application of which section to the case is, to say the least, doubtful. The Lord Chief Justice based his opinion on S. 33, which provides for these cases in which a person accused can, by reason of the nature of the offence or of the place in which it was committed, be, under the Act of 1881 or otherwise, tried for or in respect of the offence in more than one part of his Majesty's dominions. This section, which is in the supplemental part of the Act (Part IV) is not in terms restricted to offences in British possessions outside the United Kingdom, though it may not, for the reasons suggested in *Sekgome's Case*, apply to a protectorate or sphere of influence. In the cases to which it applies, S. 33 authorises the issue

of a warrant of arrest in any part of the King's dominions in which, if the accused happened to be there, he could be tried. And then the Act applies as if the offence had been committed where the warrant was issued, and the accused (subject to certain powers of the Secretary of State) can be returned for trial there, even though he could be tried where he is found and arrested.

In applying S. 33, the Court proceeded on the assumption that the offences charged were offences against Indian law; but it remains to be seen whether the statutes of the Indian Legislature, which has limited powers, apply to acts done outside but taking effect within British India. If the legislation of a British possession had to be read subject to such limitations it would be necessary at once to pass an Imperial Act to remove a dangerous anomaly. The judges also considered arguments, based on S. 10 of the Act of 1881, that it would be unjust and oppressive to return Savarkar for trial in India; but, considering that the offences charged were grave, and that in substance they were offences against the law and peace of India, the majority of the Court were in favour of allowing the accused to be sent thither for trial, and declined to accede to the argument that the accused ought to be allowed to have a trial by jury in England rather than a trial by three judges under the Indian law.—*The Law Journal.*

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Lord Halsbury on the duties of an Advocate:.—In his speech at the annual dinner of the Union Society of London, made some interesting remarks on the duty of the advocate. 'Heought,' he said, 'to do for his client that which he believes to be right, and be indifferent whether he is applauded or denounced by the Press.' This (says the *Globe*) is a sentiment that is cordially approved by the Bar, but some surprise has been occasioned by Lord Halsbury's statement that Lord Brougham, rather than Sir Alexander Cockburn, in the famous speeches they made at the Berryer banquet in 1864, expressed the correct view concerning the duty of the advocate. Lord Brougham declared, it will be remembered, that the first great quality of an advocate was 'to reckon everything subordinate to the interests of his client.' Sir Alexander Cockburn, on the other hand, while agreeing that an advocate should be fearless in carrying out the interests of his client, said:

'The arms which he wields are to be the arms of the warrior, and not of the assassin....It is his duty, to the utmost of his power, to seek to reconcile the interests he is bound to maintain with the eternal and immutable interests of truth and justice.' By nobody has the duty of the advocate ever been placed so high—if that be the right phrase—as by Lord Brougham. 'An advocate, by the sacred duty which he owes to his client, knows, in the discharge of that office, but one person in the world, *that client and none other*. To save that client by all expedient means—to protect that client at all hazards and costs to all others, and among others to himself—is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other'—this is what Lord Brougham said in his speech at the trial of Queen Caroline, made many years before. Sir Alexander Cockburn qualified his declaration at the Berryer banquet in the Middle Temple Hall. What is the licence in cross-examination which this language would not cover? Lord Halsbury's own statement that an advocate ought to do only 'that which he believes to be right' shows that he does not entirely approve of Lord Brougham's view. A characteristic allusion was once made to Lord Brougham's speech by a famous statesman under whom Lord Halsbury served in the House of Commons. As a result of a strong attack he made upon Mr. Austin, who appeared as counsel for the petitioners in the Maidstone election petition in 1838, Mr. Disraeli appeared in person before the Court of Queen's Bench to answer a charge of criminal libel. With 'sarcastic approval,' as Dr. Showell Rogers puts it, he quoted Lord Brougham's words, describing them as 'a sketch, by a great master, of the *rationale* of the duties of an advocate.' 'My lords,' he continued, 'I read this passage from an edition of the speech just published by the noble orator, who, satisfied with the fame it has long enjoyed, now deems it worthy of the immortality of his own revision, and has just published this description unaltered, after twenty years' reflection, and with its most important portions printed in capital letters.' Not that Mr. Disraeli treated Lord Brougham's words as a complete justification for his attack upon Mr. Austin. He pleaded guilty, and apologised.

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The Sins of Judges—These are coming home to roost. The new Bill for Additional Judges has given private-members ample scope for being nasty. Several members wish provision to be made that the Judges shall not be more than fifty-five years of age at the time of their appointment; others take quite a different view, and seek to insert a provision that no person shall be appointed who shall not have attained the age of seventy-five. The health of Judges also comes into consideration. Bearing in mind one or two cases within recent months, we are not surprised Mr. Markham wishes to compel any Judge appointed under the Act to pass a medical examination, or be debarred from becoming entitled to a pension should he retire from the Bench for medical reasons within fifteen years.

Again, it is proposed that the Judge shall retire if he absents himself from his duties on Saturdays habitually for week-end recreation; whilst certain gentlemen also seek to bring about the retirement of the Judge "if he absents himself from his duties before 4 o'clock on Fridays on two occasions in any term, except for medical reasons or for other reasons proved and sanctioned by the Lord Chancellor".—*Law Notes.*

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Cross-Examination.—What is the object of cross-examination? Just for a moment let us consider that, and let me put it in plain, simple English. The object of cross-examination, from a litigious standpoint, not from the high moral ground of getting at the real truth and exposing falsehood and all that, but from the purely litigious, professional standpoint, may be stated as follows:—First, it is to get something, no matter how small, to help your own case. If you fear further examination is dangerous and absolutely fruitless, far better leave it alone, far better to stop the witness, if you feel that what you are getting is not, as a fact, aiding or assisting your client in the litigation. Another object is, when you cannot get that which helps your client, try to get something to weaken your opponent,—but that is got by a different process entirely; and the third—I put it last, although it is not the least by any means—is to endeavour if you can, to separate the truth from the falsehood, more particularly if the truth told by your opposing witnesses would be of assistance to your case, for no cross-examiner is a common prosecutor to dis-

cover wrong-doing. Now, how should we best attain this object? In what way are we going to further the interests of cross-examination? In order to give an answer to that, it will be necessary to consider for a moment, what evidence is,—and I don't propose to enter upon any disquisition as to what evidence is or is not in a legal or technical sense, but what I want to point out for the purposes of cross-examination is that evidence is not facts, but is the impression of facts, and the result of certain facts or certain things which have happened. Now, the object of cross-examination is to reform these impressions, to minimize them, to explain them, to question them if you will, to doubt them if you will. But the facts themselves are something quite apart from the evidence. There are no facts in evidence at all, because, as I have said, evidence is, merely and mainly, a record of facts expressed through the witness box. In law and in the trial of a case, as you all know, facts are the result of evidence and are found independently of witnesses or anybody else, that is, the Judge or the Jury has the mental impressions given by the witness of what he saw or heard and given to the best of his ability. The tribunal then finds the facts upon these impressions conveyed through the witness box. Now, it is important that these impressions should be watched closely in the trial of every case, and the impression of every witness in regard to the way in which he records and expresses his facts. I can illustrate it better, perhaps, in this way. By taking a photograph with an imperfect camera, or a perfect camera improperly handled, your results depend on certain conditions. You get a photograph at a certain angle, and it distorts the facts; the film is defective and it creates wrong impression, and gives a wrong impression of the fact; unless it is properly and perfectly handled, the perspective is entirely wrong, and the whole subject is, as one would say, "out of drawing." Well now, apply the photograph to the mental conviction and to the mental record; you have the angle of bias, perhaps the perspective of observation; you have the question of enmity creating a cloud or defect upon the mental film. You have the lack of opportunity in the witness as another defect in record to his impressions, and the result is that instead of getting a true picture of what the witness saw or heard, you are getting a picture which may be distorted, taken at the wrong angle, with the perspective and subject out of drawing. You may get

that picture in the witness' mind presented through the witness box, and presented honestly and fairly and conscientiously on his part. Now these impressions, in the aggregate, enable, as I said, the tribunal to get at the facts, and it is the duty of the cross-examiner, it is, indeed, largely the only object of the cross-examiner, to ascertain just what the condition was, just what the mental impression was, and how it was affected by the surrounding circumstances. I can give you an example. A great many years ago when I was much younger at the Bar than I am to day —and it illustrates my point, perhaps, better than anything I can say—there was a case tried before His Honour, the late Judge McDougall. The man was charged with burglary. Now here were the facts presented by the witnesses :—A man was seen coming from the back door of a place in Toronto late at night within the burglarizing hours ; his identification, there was not much of question about that ; his manner and conduct were such as to cause comment by the officers who took him in charge ; he was evidently in great haste to escape from the house ; he was arrested, unable to give any satisfactory account of himself at the moment, and some tool or other was found in his coat pocket, and the man was arrested charged with burglary—the case of the Crown apparently absolutely complete. Now that man might have been convicted and might have served his term—a perfectly plain case; but it developed on the cross-examination of certain witnesses for the Crown, and upon the evidence which was given for the defence that this was what happened:—That this man was a friend of the servant of the house ; that he had been there spending the evening and by some accident or another he had left the door open; that he was a man of very excitable temperament, and that he had, just before leaving, a row with this servant ; he was running to catch a car because it was late at night, and he had to catch one before a certain time; that he was a mechanic, and he had a certain implement, a wrench or something of that kind, in his pocket at the time of his arrest. In the witness box, the witnesses swore to damaging evidence, and the outward facts seemed to be perfectly honest, but they were at the wrong angle; the witnesses had received these impressions through a wrong perspective, and the result of it was, as I understood the case, that if it had not been for the righting of the evidence in that way, or in some other way, the man would have been convicted,

Then take another case, and I shall be through with examples, because this is a very common case that is tried every day in the Courts, that is, ordinary negligence on the street cars or other vehicles of that description. Now, as a rule, in that case, the facts are practically undisputed, but the issue turns upon one particular circumstance, usually the rate of speed, and I am taking that just as an example. The men concerned with the car movement swear that the car was going at 6 miles an hour. The man who doesn't understand the street railway system in Toronto, or at any rate, who hasn't had very much experience perhaps in cross-examination, will press the witness to increase the speed to 10, or 12, and by the time the examination is through, the witness has got it down to 5, thus showing the danger of cross-examination. That is a fact which I have seen on more than one occasion. Now see how near the evidence is to the facts and what the cross-examiner should do with it. Take the collaterals. You take the trip the car had to make in the time allotted for the purpose; you take what the motorman, or whoever he might be, was doing at the particular moment; you test him on his observation and his chance of observation —his opportunity. You show that perhaps he had no cause to note the speed until after the accident had happened, not before. Then, there is always the question of the fear of dismissal, which would be important. Now, these facts are impressions, if I may call them facts; that is, the collaterals are impressions; that it is the duty and the business of the cross-examiner to ascertain them from his witnesses, leaving the question of speed to the witness himself. Now, that evidence as to the positive fact is of course due to a very common cause. As witnesses, we study the facts, but our natures and our dispositions, and often our consciences, are more or less blurred. We may be trying to do the best we can and to tell in the witness box the very truth and nothing but the truth. The only way you can reach the true object of a cross-examiner is to ascertain from your witness the correctness, not of the fact deposed to, but the absolute correctness, if you can, of the impressions from which he draws his conclusion of fact. Now, this means what? It means a great deal more than many of us very often pay attention to, and I shall try and explain it.

It means the most careful preparation—a man will prepare the heads of his speech to a Jury, he will often be rash enough to prepare the heads of an address to the Members of the Ontario Bar Association—but few people, I venture to say, sit down and spend an hour, or two hours, or a day, if necessary, summarising and considering what method he should adopt with a particular witness in a particular case. The only way in which a man can ever hope to be a successful cross-examiner is to prepare, and not wait until the moment, expecting favourable circumstances which will arise occasionally. I look upon the preparation for cross-examination as being infinitely more important, if there is a serious dispute about the facts, than the preparation of a brief. You have seen men who have gone into the witness box, you have seen them in the City of Toronto and elsewhere, who have told a story absolutely and apparently straight and frank, and manifestly without any equivocation or any feeling of any kind whatever. You have seen the man leave the box, a wholly discredited witness. Why? Not cross-examined by the man who takes his brief and makes his notes on the margin as the witness goes along, but cross-examined by the man, whoever he might be, who has devoted hours and hours of preparation to that particular witness, and who knows exactly his line of conduct and the way in which he should proceed with his art of cross-examination.

Now, I should say that the one great object is to avoid any complications with the positive facts. The way to do the work in that respect, would be for a man to marshal his collaterals, to see what the bearings of these collaterals are, whether it is scientific, mechanical, or ordinary, every day occurrences. Let him study and work out the problem; let him prepare his headings and methods carefully. In these days, of course, we all know pretty well what is coming on at a trial. We have our discovery, we have our witnesses; we all know what line the man is going to take. If a counsel will only devote himself to it, and will spend an hour or two, or a day, if necessary, to prepare his method of the cross-examination of that particular person, he will find that in every case he has accomplished infinitely more than he could possibly do, no matter how crafty he may be, by trusting to the spur of the moment. I can only

say that, I as far as I am concerned—and I don't profess to be more skilled than anybody else—I can only say that in many, many cases I have spent more than a day, yes, I may say two days, in some particular cases, where there has been an important witness, actually preparing for a cross-examination to the exclusion of everything else in business, where the issue depended largely upon the testimony of that witness.

In preparing, one has to consider this. You have to think the end of your method. It won't do to say, this will be a clever way of putting it, or that will be a good subject-matter of attack. The question is,—Where is it going to lead you to at the end? Consider the character of the witnesses and the nature of the case, and above all, we should consider the relation of the facts to each other. I have seen it—an instance does not recall itself to my mind at the moment—but I have seen where the cross-examiner has proved the fact to his satisfaction, and proved another one to his satisfaction, and with these two facts, by reason of their relation to each other, he has absolutely destroyed the efficiency of his work; therefore it is necessary always to consider what the relation of these facts is to each other—what is probable and what is improbable or unlikely. These are matters which every cross-examiner must keep in his mind.

Then, I should say in cross-examination, it is important to eliminate any concern about your own case, because the moment you are thinking about what your case is or will be, or what effect the evidence will have on your case, your mind is distracted from a subject which requires singleness of eye and purpose, and singleness of mental action. Then, I think it is very important that we should determine a line of attack on each point. Sometimes we have to employ different methods, as you all know, to get at results; sometimes one line of attack would not suit in another; as you know, one line of cross-examination would not apply to another case at all; and, therefore, we have to so prepare and so put down on paper—and I think it is important that everything should be put down on paper—that the eye as well as the mind will see where the thing is leading you to, that is, to prepare so that the bearing and the result are clear to the mind of the examiner. Method, of course, is largely governed by the moment, and in that I have a short quotation here which covers

the point better, perhaps, that I can say it to you, and this deals with a counsel in the very act of cross-examining: "Be mild with the mild; shrewed with the crafty; confiding with the honest; merciful to the young, the frail or the fearful; rough to the ruffian, and a thunderbolt to the liar." But in all this, never be unmindful of your own dignity. Bring to bear all the powers of your mind, not that you may shine, but that virtue may triumph, and your *cause* may prosper. Like a skilful chess-player, in every move, fix your mind upon the combinations and relations of the game—partial and temporary success may otherwise end in total and remediless defeat.—*Canada Law Times.*

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Officialism and the Law.—Lord Justice *Vaughan Williams* took occasion at the banquet of the Union Society of London on Wednesday to enter a stong protest against the advance of officialism at the expense of the regular legal tribunals. The large changes which have been made recently in the direction of submitting to public departments the decision of causes and matters previously considered proper for the control of the Courts 'are not likely,' said the Lord Justice, 'to increase the veneration of the people for the administration of justice.' The greater evil follows that in due course people become accustomed to the idea that the rule of law is, and ought to be, superseded by the discretionary powers of officials, and the tendency grows more and more to disregard the private interests of individuals, the conversation of which constitutes the weal of the community. How rapid and extensive is the growth of the new system which is displacing the even-handed justice of the Courts by the control of Government officials is shown by a Parliamentary return just issued giving the number and annual cost of the departmental officers appointed during the last four years in consequence of recent legislation. The return shows that the number of officials so appointed has been 1,154, of whom the Commissioners of Inland Revenue have taken on 225, the Board of Trade 272, the Public Trustee 60, and the Treasury 11. The total immediate cost in salaries alone of these new officials is £ 130, 212, but these are mostly salaries rising year by year on a scale, and the total annual charge must soon be greatly increased. It is indeed a portent to see that, while there is this large growth in departmental expenditure, the judicial staff of the country is starved,

and the most unreasoning opposition offered to any increased profession for the administration of justice.—*The Law Journal.*

CONTEMPORARY LEGAL LITERATURE.

The April number of the *Harvard Law Journal* opens with an article entitled "Freedom of Public Discussion" in which the writer observes as follows:—In all cases, the existence and extent of the privilege (in cases of defamation) is determined by balancing the needs of society with the right of an individual to enjoy a good reputation when he has done nothing to injure it. Immunity should always be denied when the sacrifice of individual right outweighs the public good to be derived from it. * * * In the light of such considerations the nature and extent of the freedom which the law permits in the discussion of matters of public interest is that the facts stated for discussion or comment must always be true and the comment fair. The overwhelming weight of authority holds that protection extends to comment alone. There is some authority (American,) however, for the extension of immunity to statements of fact, *e. g.*, in cases of candidates for offices whose appointment rests with an official. Even in such cases discussion in an area wider than the circumstances necessitate will not be privileged * * * The whole doctrine of immunity in defamation is based upon public policy that by allowing immunity to false statements of fact honourable and worthy men may be driven from politics and public service which loss would outweigh any benefit that might accrue to the public by the exercise of the immunity, if granted * * * Comment, criticism or discussion upon matters of public interest being an expression of opinion or judgment, and so incapable of definite proof, he who expresses it is not required by law to justify it as true but is free to express it even though others dissent, provided his own expression is 'fair.' Not only must the facts commented on be *truly* stated, the onus as regards which is on the defendant, but the comment itself must be susceptible of being an inference or deduction from the facts stated, *e.g.*, inferences wholly irrelevant or out of all proportion to the facts stated, prying into the character or motives, except in so far as they appear from the facts truly stated are not protected * * * Using a privileged occasion with some ulterior and improper purpose displaces the immunity. Having regard to the reason for

which the occasion exists, the most obvious proof for this purpose would be circumstances tending to show that the opinion expressed in the comment was not the defendant's genuine opinion or that he had no opinion at all, or otherwise published it without any belief that it was just and in reckless indifference as to whether it was just or unjust. If in fact there be honest belief in the justice of the comment it is immaterial whether it is sound or not, convincing or irrational, unless it can be proved by independent evidence that such belief, though genuinely entertained, was itself created by malice, while the defendant must prove that the subject of the comment is a matter of public importance, that the matter is only comment and that it is fair, the onus of proving malice, in order to displace the immunity, being the plaintiff. Whether the subject is one of public interest and whether there is any evidence of the defamatory matter constituting or not constituting fair comment are questions of law. All other issues in relation to a plea of fair comment are questions of fact. A personal attack may form part of a fair comment upon given facts truly stated if it be warranted by those facts. Whether a personal attack in any given case can reasonably be inferred from the stated facts upon which it purports to be a comment, is a matter of law for the Judge ; but if he should rule that the inference is capable of being reasonably drawn it is for the Jury to determine whether in that particular case it ought to be drawn. * * * All this is English law. In America the weight of judicial *dicta* (but not decisions) is undeniably contrary to English law. In many the distinction between comment and statement of facts is not kept in view, and the *dictum* is that criticism is privileged or not actionable so long as it does not attack the private character of the person criticised or impute evil motives. While these *dicta* leave little, if any, more practical freedom in the discussion of matters of public interest than that which is permitted in the discussion of the conduct of a private person, several decisions (especially of New York) are in substantial agreement with the English law.

BOOK REVIEWS.

The Mimamsa Rules of Interpretation as applied to Hindu Law: By R. S. SIRKAR, M.A., B.L., Vakil High Court Calcutta Messrs. Thacker Spink & Co, Calcutta, Price Rs. 10—This is

the Tagore Law Lecture for 1905. The subject selected is highly interesting and is bound to be useful in the administration of the Hindu Law by Judges who do not know Sanskrit or the methods by which the Dharma Sastras are interpreted by the leading Sanskrit commentators. If it had been written when British Judges had to administer Hindu Law in the early part of the 19th century some of the erroneous decisions in that law would have been avoided. It is a wonder why the subject was not thought of when the endowment was first constituted or these lectures first started. The Mimamsa Philosophy is not generally so well studied in Northern India and great credit is due to the author for discussing this subject so well as he has done. The book contains much useful information and is bound to be useful to the students of Hindu Law and all classes of the profession in this country.

The Civil Procedure Code, being Act V of 1908, *Vol. II*: By MAHIM CHANDRA SIRKAR of the Bengal Judicial Service. *Weekly Notes* Office, 3 Hastings Street, Calcutta. Price Rs. 12—This is the second volume of Mr. Sirkar's Civil Procedure Code. While the first volume contained a commentary on the sections the present volume contains a commentary on the rules. The size of the book itself is a sufficient index of the author's patience and labor, and we hope this commentary will be found as useful as the author's previous editions.

The Law of Specific Relief in India: By S. C. BANERJI, M.A., LLD., Advocate, High Court, N. W. P. R. Cambray & Co. Calcutta. Price Rs. 17—This is the Tagore Law Lecture for 1906 together with a commentary on the Specific Relief Act. The lectures are by far the most important and form the great bulk of the book. The division of the subject by the author is substantially the same as is found in the Specific Relief Act. Lecture I is introductory. Lecture II deals with the subject-matter dealt with in Part II, Chapter I, of the Act. Lecture II is Chapter II-A. Lecture IV is Chapter II-B. Lectures IV, V, VI, VII & VIII deal with defences to an action for specific performance. Lecture IX deals with Chapters III, IV & V of the Act. Lecture X with Chapter IV. Lecture XI with Chapters VII and VIII. Lecture XII with Chapters IX and X. The subject is dealt with in a thoroughly learned and exhaustive

way and the author's work is bound to become a standard work on the subject in India. The reference to the cases, both English and Indian, are numerous and exhaustive, and the book will be useful both as a Text book for students and a book of reference for practising lawyers.

Index of Patent, Design, Trade Mark and Other Cases from 1884 *to* 1909: By S. G. PIRANI, Solicitor of the Supreme Court of the State of Victoria (Australia) 1910. Sweet & Maxwell, Limited London. Price 21*s*.—The book will be found useful by those members of the profession who have specially to deal with Patents, Trade Marks and Designs. The author adopts the system of Talbot and Fort's Index of Cases but gives separate Indexes for the three subjects dealt with by him. There is also a General Index to the book.

The Annual Digest of all the Reported Decisions of the Superior Courts during the year 1909: By JOHN MEWS, *Barrister-at-Law*: Price 15*s*. Sweet and Maxwell, Limited, London.—This is the Annual Digest of the English Reports for 1909, and, as in the last year, the author has added some Scottish and Irish cases. As a Digest of English Case-Law it will certainly be useful to the members of the profession. A few Indian cases published in the *Times Law Reports* will also be found digested.

The Law relating to the Reconstruction and Amalgamation of Joint Stock Companies: By P. F. SIMONSON, M.A., OXON. 2nd Edn., 1910. Sweet and Maxwell, Limited, London. Price 10*s*. 6*d*. —This book deals with a special branch of Company Law which is fast coming into importance in India, *viz*., reconstruction and amalgamation of Joint Stock Companies. In England, a recent Act of 1908 codifies the law upon the subject, and the author has dealt with the subject with special reference to this new Act. He has added a copious and useful Index.

Roman Law Examination Guide: By D. T. OLIVER, LL.M., *Barrister-at-Law*, and W. N. WILLIAMS, M.A., LL.B., Lecturer at Trinity College, Cambridge. Third Edition, 1910. By Butterworth & Co., 11 and 12 Bell Yard, Temple Bar, London. Price 10 *s*. 6 *d*.—This is a book specially intended for the use of students and it is written in the form of questions and answers and is a considerably improved edition of the last one. We have no doubt that this edition will be much appreciated by students who have to read Roman Law for their examinations.

The Doctrine of Absolute Privilege: By R. GOVINDA MARAR, B.A. A.L., Vakil High Court, Madras. Messrs. Higginbotham &

Co. Price Rs. 2.—This neat little pamphlet deals with the special doctrine of privilege in the law of defamation. The author does not merely give a digest of the cases but arranges them under proper headings. The book is dedicated to the Honourable Mr. Justice C. Sankaran Nair. We trust it will be found useful to the members of the profession.

Evidence in Brief: By V. D. KNOWLES of the Middle Temple. Second Edition. By Effingham Wilson; 54, Threadneedle E. C., London. Price 2*s*. 6*d*.—This short book is intended primarily for students and those who commence the study of the Law of Evidence, and gives in a short compass the general principles of the Law of Evidence. We hope the book will be found to be a safe guide for reading the larger works on Evidence and trust it will be found useful to those for whom it is intended.

International Law Directory for 1910: By PHILIP GRABURN KIME. Butterworth & Co., 11 and 12 Bell Yard, Temple Bar, London.—This is an annual publication and will be found useful to those who may be concerned with litigation in foreign countries. So far as India is concerned the book does not add to the information contained in the publication of last year.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

1. *The Detection of Forgery*. A Practical Hand-book by Douglas Mackbrun and Captain Waithman Caddell, London: Charles and Edwin Layton, 56, Farringdon Street, E. C. Price 6*s*.

2. *The Hindu Law of Inheritance* : with a chapter on the Law of Wills : By Sir Ernest John Trevelyan, D.C.L., Late Judge of the High Court, Calcutta, 1910. Messrs Thacker Spink & Co., Calcutta. Price Rs. 12.

Allahabad Law Journal for	May & June 1910.
Bombay Law Reporter	Do.
Burma Law Reporter	Do.
Calcutta Law Journal	Do.
Calcutta Weekly Notes	Do.
Canada Law Journal	Do.
Canada Law Times	Do.
Case and Comment	Do.
Central Law Journal	Do
Chicago Legal News	Do
Criminal Law Journal	Do.
Green Bag	Do.
Harvard Law Review	Do.
Hindustan Review	Do.
Kathiawar Law Reports	Do.
Law Magazine and Review	Do.
Law Notes	Do.
Law Students' Helper	Do.
Law Students' Journal	Do.
Michigan Law Review	Do.
Police Service Magazine	Do.
Punjab Law Reporter	Do.
The Law Journal	Do.
The Lawyer	Do